

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4238 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 : NO

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M/S. ATV PROJECTS (INDIA)LTD.

Versus

GUJARAT STATE FINANCIAL SERVICE LTD.  
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Appearance:

MR SK BUKHARI for Petitioners  
MR BM GUPTA for Respondent No. 1  
MR PB BHATT APP for Res.No.2.  
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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/11/98

ORAL JUDGEMENT

Heard learned advocates Mr. Bukhari for the petitioners and Mr. B.M.Gupta for the respondent no.1 and learned APP Mr. Bhatt for the respondent no.2.

The petitioners, by this petition, are seeking to quash the complaint lodged by the respondent no.1 against

them for commission of an offence punishable under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act"), being Criminal Case No. 5431/97 pending before the learned Metropolitan Magistrate, Ahmedabad. It is not disputed that the petitioners had borrowed certain amount from the respondent no.1 Company, and in due discharge of the said loan amount, had, on 28th March, 1995, given six post-dated cheques dated 28th April, 1997 onwards. Six cheques dated 28th April, 1997, 28th May, 1997, 28th June, 1997, 28th July, 1997, 28th August, 1998 and 28th September, 1998 were presented to the Bank and were dishonoured. The petitioners, thus, prima-facie, appear to have committed an offence punishable under section 138 of the Act.

The only contention that is raised by Mr. Bukhari is that the respondent no.1 has presented a petition for winding up of the petitioner no.1 company in the Bombay High Court and the same is still pending. Mr. Bukhari has submitted that in view of section 536 (2) of the Companies Act, 1956, the petitioner no.1 Company is debarred from entering into any transaction from the date of presentation of a winding up petition and, therefore, could not have honoured the cheques which had become due and payable on 28th April, 1997 and thereafter.

I am afraid, I can not accept the contentions raised by Mr. Bukhari. Section 536 (2) of the Companies Act deals with the winding up of a Company by or subject to the supervision of the court and bars, inter alia, any disposition of the property of the company after the commencement of the winding up. It is not disputed that no order to wind up the Company has yet been made by the court. Mr. Bukhari has also relied upon the judgment of the Bombay High Court in the matter of TULSIDAS JASRAJ PAREKH VS THE INDUSTRIAL BANK OF WESTERN INDIA ( 32, BLR, 953) The said judgment deals with the disposition of the property of the Company in favour of unsecured creditors. The same shall have no applicability to the facts of the present case. Mr. Bukhari has also relied upon the judgment of the Allahabad High Court in the matter of OFFICIAL LIQUIDATOR, GORAKHPUR ELECTRICITY CO. LTD. VS. M/S SIEMENS (INDIA) LTD. (AIR 1940, ALLAHABAD, 514) and the judgment of the Supreme Court CHITTOOR DISTRICT CO-OPERATIVE MARKETING SOCIETY LTD. VS M/S VEGETOLS LTD & ANR (1987 (Suppl) SCC, 167) In both the cases referred to hereinabove, the court was considering validation of transaction by a Company after presentation of winding up petition. The said judgments shall have no applicability to the facts of the present case. Mr. Bukhari has not

pointed out any infirmity in the complaint which would justify quashing of the same.

Petition is, therefore, summarily rejected.  
Notice is discharged. Ad-interim relief is vacated.

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JOSHI